IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 29TH MARCH 2007 / 8TH CHAITHRA 1929

WP(C).No. 10939 of 2007(S)

PETITIONER:

N.V.JOSEPH, SON OF LAT N.K. VARKEY, 31/507,
PATHADYPALAM, EDAPPALLY (NORTH) P.O.,
KOCHI-24.

BY ADV. SRI.P.V.LONACHAN
ADV. SRI.P.G.PRESANNAKUMAR
ADV. SRI.J.MADHUSOODANAN PILLAI

RESPONDENTS:
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1. REEMA, DAUGHTER OF JOHN, MANJILAS HOUSE,
NELLIKKUNNU, THRISSUR.

2. EILEN (MINOR) DAUGHTER OF REEMA,
MANJILAS HOUSE, NELLIKKUNNU, THRISSUR.

3. GEORGE (MINOR) SON OF REEMA,
MANJILAS HOUSE, NELLIKKUNNU, THRISSUR.

(RESPONDENTS 2 & 3 ARE MINORS REPRESENTED BY THE 1ST RESPONDENT).

4. THE SECRETARY, VALIAKARY PADASEKHARA
KARSHAKA SANGHOM NO.261/77, EZHUPUNNA P.O.,
CHERTHALA.

5. THE FAMILY COURT, THRISSUR.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 29/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KURIAN JOSEPH & K.T. SANKARAN, JJ.

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W.P.(C) No. 10939 OF 2007

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Dated this the 29th March, 2007

J U D G M E N T

Sankaran, J:

Grievance of the petitioner is that there are procedural irregularities committed by the Family Court and that those irregularities are to be rectified by exercising jurisdiction under Article 227 of the of the Constitution of India.

2. Respondents Nos. 1 to 3 filed O.P. 1401 of 2006 before the Family Court, Thrissur against the petitioner. Along with the Original Petition, an application under Order XXXVIII Rule 5 of the Code of Civil Procedure was filed. The Family Court passed Ext. P3 order in that application on 4.11.2006. Notice was issued returnable on 10.01.2007. It is stated in the Writ Petition that there after the petitioners in the Original Petition filed an application for issuing an order for garnishee and along with that application I.A. 3858 of 2006 was filed for advancing the case. The grievance of the petitioner is that without issuing notice , the case was advanced and a garnishee order was passed by the court below. It is also stated in the Writ Petition that there are certain corrections in Ext. P5

proceedings.

3. Had the petitioners in the Original Petition filed an application for attachment before judgment as well as an application for an order against garnishee, petitioner herein would not have been entitled to a notice and the court could have passed an interim order thereon. Now the only grievance of the petitioner is that on an application filed by the petitioners in the Original Petition, the case was advanced without notice to the Writ Petitioner. Since the Writ Petitioner was not entitled for a notice, no prejudice was caused to the writ petitioner by advancing the case before the receipt of notice by him. We do not think that there are procedural irregularities warranting interference, It is for the writ petitioner to appear before the court below and raise all the contentions before the court and contest the matter on the merits.

Writ Petition is disposed of granting that liberty to the writ petitioner to contest the matter on the merits.

KURIAN JOSEPH,
JUDGE.

K.T. SANKARAN,
JUDGE.

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